

**BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**

DOCKET NO. 2020-229-E

IN THE MATTER OF:

Dominion Energy South Carolina,
Incorporated's Establishment of a Solar Choice
Metering Tariff Pursuant to S.C. Code Ann.
Section 58-40-20

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**MOTION TO REQUIRE
ADDITIONAL NOTICE AND
ESTABLISH A PUBLIC
PARTICIPATION HEARING**

Pursuant to Rules 103-829 and 103-836 of the rules and regulations of the South Carolina Public Service Commission ("Commission") and S.C. Code Ann. §§ 58-27-1930 and 58-40-20(F)(1), Vote Solar respectfully requests that the Commission require Dominion Energy South Carolina ("DESC") to: (1) provide additional notice to existing customer-generators that they could experience a material and adverse increase in electric bills under DESC's proposed Subscription Solar Choice rider; and (2) establish a virtual public hearing to provide affected customers and other members of the public the opportunity to comment on DESC's proposal. In light of the limited time available before the scheduled evidentiary hearing in this case, Vote Solar asks that the Commission expedite consideration of this motion and issue an order on or before January 13, 2021 to grant the requested relief. In support of this motion, Vote Solar states:

Factual Background

1. Commission Order No. 2015-194 approved an unopposed settlement ("NEM Settlement")¹ between key stakeholders—including DESC's predecessor

¹ The NEM Settlement was filed by the Office of Regulatory Staff on December 11, 2014 in Docket No. 2014-246-E (Matter Id. #253807), *available at* <https://dms.psc.sc.gov/Attachments/Matter/46a1fee8-155d-141f-233230a670190eb2>.

electrical utility South Carolina Electric & Gas—establishing a net energy metering program (“NEM”) consistent with the provisions of the South Carolina Distributed Energy Resources Act, S.C. Code Ann. § 58-39-110 *et seq.* (“Act 236”). The NEM Settlement, among other things, established that full retail net energy metering (i.e., the 1:1 kWh crediting rate) would be offered on a first-come basis through the NEM Settlement effective period (i.e., until January 1, 2021) or until statutory limits on program participation under Act 236 were reached. The NEM Settlement provided that customer-generators applying and receiving service pursuant to the NEM Settlement “shall have the right to remain on that rate, according to the terms and conditions specified in this Settlement Agreement through December 31, 2025.”²

2. Customer-generators taking service under the terms and conditions of the NEM Settlement are currently on DESC’s Rider to Retail Rates – Second NEM for Renewable Energy Facilities (“Second NEM Rider”). The Second NEM Rider was closed to new customers effective May 4, 2019.³ As stated by DESC in the Direct Testimony of Allen Rooks filed in this docket on December 15, 2020, “[e]xisting customers taking service under this Rider can continue to do so through December 31, 2025.”

3. As of May 6, 2019, DESC states that it had approved applications for interconnection from customer-generators totaling an estimated gross generating capacity of 86,851 kilowatts with another 7,311 kilowatts pending approval. The Company further

² NEM Settlement at ¶ 15.

³ Letter Regarding Net Energy Metering on behalf of DESC, filed on May 16, 2019 in Docket No. 2014-246-E (Matter Id #284651).

states in a footnote that of that number, 74,860 kilowatts are presently interconnected with another 5,454 kilowatts have been approved but not yet interconnected.⁴

4. According to May 2019 data published by the United States Energy Information Administration through Form EIA-861M, DESC reported having 68,914 kilowatts of residential NEM capacity, representing 9,633 customers, and 6,900 kilowatts of commercial NEM capacity, representing 107 commercial customers.⁵

5. On May 16, Governor McMaster signed the South Carolina Energy Freedom Act (“Act 62”). Act 62 modified much of Chapter 40 (Net Energy Metering), Title 58—first established by Act 236—and calls for the establishment of Solar Choice Metering tariffs to be a successor to Act 236’s Chapter 40 NEM tariffs. Act 62 provides, in particular, that “[a]fter notice and opportunity for public comment and public hearing, the commission shall establish a ‘solar choice metering tariff’ for customer-generators to go into effect for applications received after May 31, 2021.” S.C. Code Ann. § 58-40-20(F)(1).

6. Act 62 expressly extends the terms and conditions of the NEM Settlement to customer-generators that apply for net metering after the effective date of the act (May 16, 2019) and before June 1, 2021. Act 62 did not otherwise modify the rights of customer-generators first enrolled under the NEM Settlement prior to the effective date of Act 62, but does require the Commission to consider “whether additional mitigation

⁴ *Id.* at p.2, fn1.

⁵ The United States Energy Information Administration (“EIA”) is the statistical and analytical agency within the United States Department of Energy. EIA tracks and publishes monthly reports on net energy metering participation and installed capacity, broken out by electric service provider, at <https://www.eia.gov/electricity/data/eia861m/>.

measures are warranted to transition existing customer-generators....” S.C. Code Ann. § 58-40-20(F)(3)(c).

7. On November 3, 2020, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC filed a joint application pursuant to Commission Rule 103-823—with supporting direct testimony and exhibits—for approval of a proposed Solar Choice Metering tariff.⁶ The Duke Companies’ joint application details various options for net metering customers who first took service under the NEM Settlement prior to the effective date of Act 62. The Duke Companies’ application and supporting testimony details pre-Act 62 customer-generators’ various options, including an option of staying on the default residential rate schedule with slight modifications to current practice (monthly netting and a minimum bill) and accepting a locked-in export rate set at the effective retail rate at the time those customers’ rights under the NEM Settlement expire.⁷

8. The Commission established this proceeding, Docket No. 2020-229-E, through Directive Order No. 2020-622 (September 16, 2020), which established the procedural schedule and set the date for DESC to file direct testimony and exhibits.

9. On December 15, 2020, DESC filed direct testimony and exhibits in this proceeding, but chose not to file an application pursuant Commission Rule 103-823. The only portion of DESC’s December 15, 2020 filings that address mitigation or transition of NEM Settlement/pre-Act 62 customer-generators is found in the direct testimony of Witness Rooks. There, Witness Rooks states that “existing customers taking service

⁶ Joint Application of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Approval of Solar Choice Metering Tariffs, filed November 2, 2020 in Docket Nos. 2020-264-E and 2020-265-E (Matter Id #295175), *available at* <https://dms.psc.sc.gov/Attachments/Matter/9dc8574f-5814-4466-aa0f-ca0df5eab87b>.

⁷ *Id.* at p.16.

under this Rider [Second NEM rider] can continue to do so through December 31, 2025. At that time, these customers would have the option to transition to the Solar Choice Tariffs.”⁸ Witness Rooks does not address whether there is an option other than the Solar Choice Tariffs once the rights under the NEM Settlement expire for these customer-generators who applied pre-Act 62.

10. The successor Solar Choice tariff that Witness Rooks describes in his testimony and includes in his exhibits features a new rate component that will apply to customer-generators. The “Subscription Fee” is assessed and charged on a monthly basis based on the system size of the “renewable generators,” differentiated by customer type. For residential customers, the Subscription Fee is \$5.40 per installed kW. For small general service customers, the Subscription Fee is set at \$6.50 per installed kW. A fee like this has not previously been proposed, collected, or imposed on DESC’s customer-generators.

11. The Company has also proposed an across the board increase to the basic facilities charge (“BFC”) that will be collected from customer-generators compared to the currently applicable BFC. For residential customers, the BFC would be increased to \$19.50, which is currently approved for \$9/month for DESC’s Schedule Rate 8 – Residential Service.

12. The Subscription Fee and BFC increase represent fixed monthly charges that will be collected from customer-generators and are ascertainable based on

⁸ Direct Testimony of Allen W. Rooks, p. 4, ln 3-5, filed in Docket No. 2020-229-E on December 15, 2020 (Matter Id #296029).

information available to DESC about its existing customer-generators. Neither the Subscription Fee nor the BFC vary based on the customer-generator's usage.

Argument

A. Additional Notice to Existing Customer-Generators Is Needed to Protect Customer-Generators' Due Process Rights and Expectations as Consumers.

DESC's stand-alone testimony fails to provide adequate notice to its existing customer-generator of the extreme consequences of DESC's proposed new charges that will apply in 2026, when their NEM Settlement rights expire. It is customary for an electrical utility to file an application pursuant to Rule 103-823 when seeking a change in rates. Rule 103-823 provides that "[a]pplications are submitted to the Commission for any authorization or permission which the Commission is empowered to grant under its statutory authority, including applications for establishment or adjustment of rates and charges." [emphasis added] Under subsection (A) of this rule, the content of the Application is required to "state clearly and concisely the authorization of permission sought, and shall refer to the specific statutory provision or other authority under which Commission authorization or permission is sought." *Id.*

DESC did not file an application in this proceeding, but instead used direct testimony to attempt to state the relief it is requesting. While failure to file an application does not appear to create a basis to dismiss DESC's filing,⁹ DESC's pre-filed testimony is procedurally suspect because it fails to clearly articulate the relief requested (including treatment of existing customer-generators). As such, the filing is incapable of providing

⁹ Vote Solar acknowledges that the Commission initiated the docket under its own authority to implement Act 62.

adequate notice to existing customer-generators of how they will be impacted. The Duke Companies, in contrast, provide significant clarity in their joint application as to existing customer-generators' rights after expiration of the NEM Settlement. To the best of Vote Solar's knowledge, DESC appears to have taken no other action—e.g., no press release, no information on the DESC website—to highlight to the public the contents of its current filing and proposal. It is for this reason that Vote Solar moves for the Commission to require DESC to provide additional notice to its existing customer-generators who would be materially, substantially, and adversely affected by the imposition of significant new charges at the expiration of NEM Settlement rights.

A reasonable customer could not review DESC's December 15, 2020 filing and be expected to understand the implications of DESC's solar choice proposal on existing customer-generators. Unlike the Duke Companies' joint application, DESC's testimony and exhibits fail to provide a cogent explanation of precisely what "options" an existing customer-generator will have when their rights under the NEM Settlement expire.

Witness Rooks states that existing customer-generators will have the "option" of transitioning to the Subscription Solar Choice rider on January 1, 2026, but he fails to explain either the mechanism for making the election (i.e., is transition to the Subscription Solar Choice rider opt-in or opt-out) or whether customer-generators have any other option that allows them to stay on their existing rate without incurring a Subscription Fee. If a customer-generator opts out of the Subscription Solar Choice election or refuses to opt-in, will they simply be disconnected from the grid?

While DESC's failure to file an application in this instance may not impede the conduct of this case for current intervenors and the Commission, the filing's lack of

clarity does disadvantage existing customer-generators who will be impacted but lack notice of the proposal. The record of this case would be incomplete without the perspective and public testimony of affected customer-generators. Without additional notice or opportunity to comment, affected customer-generators are unlikely to know what is at stake in this proceeding until it is too late to do or say anything about it. Accordingly, requiring additional clarification and explicit disclosure of the certain and presently ascertainable impacts of DESC's proposal (via direct notice to the over 9,700 affected customers) is reasonable and proper.

DESC would not have to speculate about its customer-generators' unique circumstances to explain how the proposal impacts their rights. DESC's subscription fee proposal, on its face, provides sufficient information to determine a material and adverse rate impact to existing customer-generators. Based solely on the EIA data¹⁰ on DESC's residential capacity in May 2019, roughly 70,000 kilowatts of capacity would translate to an annual aggregate charge of approximately \$4,500,000 on residential customer-generators. This is revenue that is not related to the customers usage and cannot be mitigated by any behavioral modification (e.g., shifting usage to off-peak periods does not reduce this charge). With 9,700 residential customer-generators, an average customer could see an annual bill increase of around \$470 each year. Moreover, unlike a rate

¹⁰ Vote Solar is awaiting responses to various discovery requests to provide more data on customer-generators that applied prior to Act 62 and qualified for DESC's Second NEM rider. Vote Solar is particularly concerned that a large number of low-income or moderate-income customers may have taken advantage of twenty-year solar leases to avoid the upfront capital costs of installation and will face significant hardship from the rate shock associated with the subscription fee. It is Vote Solar's opinion and belief that low-income customers are more likely to avail themselves of a lease to gain access to the solar savings of NEM, because of difficulties otherwise paying for or financing the upfront capital costs of going solar.

increase or rate design change that will impact customers in different ways based on their unique load profile, this rate component is fixed and its future application and impact can already be determined. The group of impacted customers are ascertainable and DESC should be required to take additional steps to make them aware of this pending action.

Specifically, Vote Solar requests that the Commission order DESC to provide additional notice to existing customer-generators by direct written communications with each affected customer-generator that includes the known financial impact of the Subscription Fee based on customer class and customer-generator system size. DESC should have the ability to email affected customer-generators with the details of the proposal and the knowable revenue impacts of the subscription fee based on their system size. If email is not an option, DESC should be required to send direct mail to the customer-generator's account physical mailing address.

In lieu of customizing each communication to show the unique impact on that customer-generator based on their unique system size, DESC could simply prepare a table like Table 1, below, illustrating the monthly and annual impacts of the subscription fee. DESC should also include a link or information about how the customer-generator can participate in public comment or a public hearing related to this matter, should the Commission grant that portion of this motion. The same information should be posted prominently on DESC's main landing page on their website as well as the "Solar for Your Home" subpage to adequately give notice to existing customer-generators of these significant future rate impacts.

Table 1. Illustrative Subscription Fee Impact on Residential Customer-Generators

System Size	Monthly Impact of Subscription Fee on Customer-Generator	Annual Impact of Subscription Fee on Customer-Generator
1-3 kW	\$16.20	\$194.40
4 kW	\$21.60	\$259.20
5 kW	\$27.00	\$324.00
6 kW	\$32.40	\$388.80
7 kW	\$37.90	\$454.80
8 kW	\$43.20	\$518.40
9 kW	\$48.60	\$583.20
10 kW	\$54.00	\$648.00

Given the circumstances and the inevitable, material, and ascertainable impact of this proposal on a defined set of over 9,700 customers, it is reasonable to require DESC to provide such additional notice. Providing notice in the form and content discussed above would be sufficient to protect affected customers' due process and consumer rights. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands."¹¹ While Vote Solar does not argue that due process compels this exact remedy, it appears reasonable in light of the circumstances and the severity of the impacts on customer-generators' future electric bills. Providing this notice to affected customer-generators gives them the information they will need to inform the Commission of how the proposed charge affects them personally.

Such personal, direct customer-generator testimony and comment will be an important part of the record of this case. Customer-generator testimony could inform and support the Commission's exercise of discretion in considering whether and how to

¹¹ S.C. Dep't of Soc. Servs. V. Wilson, 352 S.C. 445, 452 (2002) (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)).

mitigate the impacts of transitioning to solar choice tariffs on existing customer-generators. Commission consideration of this factor is required in S.C. Code Ann. § 58-40-20(F)(3)(c). But customer-generators must have adequate notice and opportunity to participate to provide this information. The burden and costs of providing additional notice is immaterial in comparison to the over \$5,000,000 aggregate annual revenue impact on residential and small commercial customer-generators. For these reasons, additional notice is required to ensure that the process and outcome of this case is just and reasonable.

B. The Energy Freedom Act’s Procedure for Approving New Solar Choice Metering Tariffs Contemplates a Public Participation Hearing for This Docket.

Vote Solar respectfully requests that the Commission establish a public hearing to satisfy the public hearing element of the Energy Freedom Act. Section 58-40-20(F)(1) provides that the solar choice metering tariff—a successor to the current net energy metering tariff and program—shall be established “after notice and opportunity for public comment and public hearing.” Given the wide public interest in this proceeding—and the large number of current customer-generators facing materially adverse increases in rates in 2026—opportunities for intervention and an evidentiary hearing are not sufficient to provide the public opportunity to be heard. The public could not have known about these new Subscription Fee charges before the date for intervention, even if they had the resources to participate through counsel. To the best of Vote Solar’s knowledge, DESC did not discuss the contents of its December 15 filing with any other party or make any

public statements regarding its plans for a successor tariff and the transition of existing customers. The public did not know and could not know what DESC had in store.¹²

Act 62 contemplates a public participation hearing before approval of the solar choice metering tariffs to ensure robust public input and participation. While the term “public hearing” can indicate either an evidentiary hearing¹³ or a public participation hearing, the use in the context of Section 58-40-20(F)(1)—“an opportunity for public comment and public hearing”—appears to embrace the colloquial meaning to indicate an opportunity for any member of the public (or any DESC customer) to appear before the Commission and give live testimony. At a minimum, members of the public who are not parties to the proceeding must have a clearly defined opportunity to submit written comments on the proposed solar choice tariff at issue. Vote Solar recommends that the Commission provide additional guidance on the time and manner for written public comment to be received in addition to establishing a virtual public hearing opportunity for members of the public to be heard.

¹² In contrast, over six weeks prior to the Duke Companies’ Joint Application filing, the Duke Companies issued a press release and provided public comment on its planned Solar Choice Metering tariff and stipulation in multiple publicly-accessible news outlets. *See, e.g., Duke Energy reaches deal with Vote Solar, Sunrun, renewable energy advocates to modernize, expand rooftop solar in South Carolina* (Duke Energy press release), available at <https://news.duke-energy.com/releases/duke-energy-reaches-deal-with-vote-solar-sunrun-renewable-energy-advocates-to-modernize-expand-rooftop-solar-in-south-carolina>; Trabish, Herman K., *Duke-solar industry breakthrough settlement aims to end rooftop solar cost shift debates*, Utility Dive (Sept. 16, 2020), available at <https://www.utilitydive.com/news/duke-solar-industry-breakthrough-settlement-aims-to-end-rooftop-solar-cost/585124/>.

¹³ The term “evidentiary hearing” is used in Section 58-41-20—added to the South Carolina Code by Act 62—as well as in Section 58-5-460 (right for evidentiary hearing on petition for review of initial order or failure to issue order).

CONCLUSION

WHEREFORE, Vote Solar respectfully requests that the Commission grant its motion and require additional notice requirements to DESC's existing customer-generators to alert them to the materially adverse future impacts of the proposed rate changes, particularly the subscription fee. Further, given the likely strong public interest in this case, Vote Solar requests that the Commission establish a public participation hearing for purposes of taking live sworn or unsworn oral comment from non-party members of the public in the appropriate virtual forum and to grant any other relief that the Commission deems appropriate.

Respectfully submitted this 22nd day of December, 2020.

/s/ Thadeus B. Culley
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VERIFICATION

Thadeus B. Culley, first being duly sworn, deposes and says that he is the attorney for Vote Solar; that he has read the foregoing Motion to Require Additional Notice and Establish a Public Participation Hearing and that the same is true of his personal knowledge, except as to any matters and things therein stated on information and belief, and as to those, he believes them to be true; and that he is authorized to sign this verification on behalf of Vote Solar.

This the 22nd day of December, 2020.

Thadeus B. Culley

Thadeus B. Culley

NORTH CAROLINA

Orange COUNTY

Sworn to and subscribed before me,

This the 22 day of December, 2020

Devon W. Bass

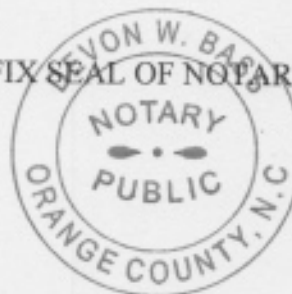
Notary Public

Devon W. Bass

Printed Name of Notary Public

My Commission Expires: 03/21/2023

[AFFIX SEAL OF NOTARY]



CERTIFICATE OF SERVICE

I hereby certify that I have served the persons listed on the official service list for Docket No. 2020-229-E, listed below, a copy of the **MOTION TO REQUIRE ADDITIONAL NOTICE AND ESTABLISH A PUBLIC PARTICIPATION HEARING** via U.S. Mail or electronic mail on this day, December 22, 2020.

/s/ Thadeus B. Culley
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